

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

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Committee to Re-Elect Vito Fossella  
and Anthony J. Maltese, as treasurer

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**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by Eugene V. Prisco received by the Federal Election Commission ("Commission") on November 2, 1998. After conducting an investigation, the Commission found probable cause to believe that Committee to Re-Elect Vito Fossella and Anthony J. Maltese, as treasurer ("Fossella Committee" or "Respondents") violated 2 U.S.C. §§ 434(b)(3)(A), 434(b)(8), and 441a(f), and 11 C.F.R. §§ 103.3(a), 104.11(a), and 110.1(b)(3)(i) of the Federal Election Campaign Act of 1971, as amended ("the Act") or its regulations. However, the Commission found that there was no reason to believe that Vito J. Fossella had violated any provision of the Act or regulations in connection with this matter. The Commission also found that there was no reason to believe that the ADCO Electric Corporation, Angiuli Motors, Inc., and selected employees violated 2 U.S.C. §§ 441b and 441f by making improper contributions to the Fossella Committee through the use of conduits or intermediaries.

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

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II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission to resolve this matter without the time and expenses of litigation.

IV. The pertinent facts in this matter are as follows:

1. The Fossella Committee is a political committee within the meaning of 2 U.S.C. § 431(4).
2. Anthony J. Maltese is the treasurer of the Fossella Committee.
3. a. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person may make a contribution to a candidate for Federal office, and his or her authorized campaign committee, in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). No candidate committee may knowingly accept contributions in excess of the prescribed limits. 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a). The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purposes of influencing an election for Federal office. 2 U.S.C. § 431(8)(A)(i) and 2 U.S.C. § 441b(b)(2). Furthermore, the contribution limitations shall apply separately with respect to each election. 2 U.S.C. § 441a(a)(6).  
  
b. Primary Elections, Special Elections, General Elections, and party conventions with authority to nominate a candidate are viewed by the Act as separate elections for the purposes of the contribution limits. 2 U.S.C. §§ 431(1)(A) and (B); 11 C.F.R. §§ 100.2(b), (c), (e) and (f). Thus, an individual can make separate contributions for the primary and general elections. For each election, the contribution(s) shall not exceed \$1,000.

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c. Contributors to candidates are encouraged to designate their contributions in writing for particular elections. 11 C.F.R. § 110.1(b)(2)(i). A contribution shall be considered to be designated in writing for a particular election if: the contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; the contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or the contribution is re-designated. 11 C.F.R. § 110.1(b)(4). In cases where the contributor has not designated the contribution in writing for a particular election, the contribution is considered to have been made for the next election for that Federal office after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii).

d. The treasurer of an authorized political committee may request a written re-designation of a contribution by the contributor for a different election if: the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same election, exceeds the \$1,000 per election maximum limit; the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under net debts outstanding provisions; or the contribution was not designated in writing for a particular election, and the contribution exceeds the \$1,000 per election limitation or the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are no net debts outstanding on the date the contribution is received. 11 C.F.R. § 110.1(b)(5)(i).

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e. A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. 11 C.F.R. § 110.1(3)(i). Net debts outstanding are calculated as of the day of election and mean the total amount of unpaid debt and obligations incurred with respect to an election, less the sum of: the total available cash on hand to pay those debts and obligations, and the total amount owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, etc. 11 C.F.R. § 110.1(b)(3)(ii). If net debts outstanding do exist, then, as additional funds are received and expenditures made, the amount of net debts outstanding shall be adjusted. Conversely, if net debts outstanding do not exist after an election, then a committee may not lawfully accept any post-election contributions for that election for any purpose. 11 C.F.R. § 110.1(b)(3)(iii). Candidates who participate in both the Primary and General Elections may pay Primary Election debts and obligations with funds that represent contributions made with respect to the General Election. 11 C.F.R. § 110.1(b)(3)(iv).

f. Pursuant to 11 C.F.R. §§ 110.1(b)(3)(i) and 110.2(b)(3)(i), when a treasurer of a campaign committee receives post-election contributions in the absence of, or in excess of, net debts outstanding, then, within ten days of receipt, the treasurer must either deposit the contribution or return it to the contributor. If deposited, the treasurer has 60 days from the date of receipt to obtain a re-designation or reattribution of the contribution to cure the illegality. 11 C.F.R. §§ 103.3(b)(3) and 110.1(b). All committee requests for re-designations must disclose that the contributor may instead seek a refund of the contribution, and all re-designations must be signed and received in writing from the contributor within 60 days of receipt of the contribution. 11 C.F.R. § 110.1(b)(5)(ii). All re-designations must be reported by the recipient committee, and

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shall disclose the original contribution information, the election for which the contribution was re-designated and the date the re-designation was received by the committee. 11 C.F.R.

§ 104.8(d)(2)(i).

g. Contributions that are made by more than one person shall include the signature of each contributor on the check or in a separate writing. 11 C.F.R. § 110.1(k)(1). If a joint contribution does not indicate the amount that is to be attributed to each contributor, the contribution will be attributed equally to each contributor. 11 C.F.R. §§ 110.1(k)(1) and (2). If a contribution to a candidate either on its face or when aggregated with other contributions from the same contributor exceeds the limitations, the treasurer may inquire whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3)(i).

h. A contribution shall be considered to be re-attributed to another contributor if: (1) the treasurer of the recipient committee asks the contributor whether the contribution was intended to be a joint contribution, and informs the contributor that he or she may request a reattribution of the excessive portion of the contribution if it was intended to be a joint contribution; and (2) within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written re-attribution of the contribution, which is signed by each contributor, and that indicates the amount to be attributed to each contributor if equal attribution is not intended. 11 C.F.R. §§ 110.1(k)(3)(ii)(A) and (B).

i. All receipts received by a political committee shall be deposited by the treasurer in a designated committee depository. 2 U.S.C. § 432(h)(1). Such deposit shall be made within ten days of the treasurer's receipt. 11 C.F.R. § 103.3(a). In addition,

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2 U.S.C. § 434(b)(3) requires that committees disclose the names of contributors of amounts aggregating in excess of \$200, and the amounts and dates of their contributions.

j. Debts exceeding \$500 shall be reported as of the date the debts are incurred. 11 C.F.R § 104.11(b). Further, 11 C.F.R § 104.11(a) provides that the debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt was extinguished.

4. During calendar years 1997 and 1998, the Fossella Committee participated in four elections: a 1997 Special Primary Election; a 1997 Special General Election; a September 15, 1998 Regular Primary Election; and a November 3, 1998 General Election.

5. During calendar years 1997 and 1998, the Fossella Committee received excessive contributions from 75 contributors totaling \$62,210.

6. The Fossella Committee accepted all of the excessive contributions, and did not obtain either a written re-attribution or written re-designation of the accepted contributions at issue within the time and manner required by the Commission.

7. During calendar years 1997 and 1998, the Fossella Committee received excessive contributions from three Political Action Committees ("PACs") totaling \$10,200.

8. The Fossella Committee accepted all of these excessive contributions, and did not obtain a written re-designation of the contributions at issue within the time and in the manner required by statute and/or regulation.

9. The Fossella Committee improperly reported in its disclosure reports the re-

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designations of 68 contributors that they received during calendar years 1997-1998. During the same period, Respondents also improperly reported in its disclosure reports the re-attributions of four contributors.

10. In each case, the Fossella Committee re-designated or re-attributed the given contribution for an election without obtaining a proper re-designation or re-attribution from the given contributor. Although Respondents attempted to obtain written re-designations for many of the excessive contributions at issue, they concede that such re-designations/re-attributions were not received until April 2002.

11. During calendar years 1997-1998, the Fossella Committee received 450 checks from individuals and political committees totaling \$280,685 for which they contend they have no documentation to prove contributions were not deposited or returned within ten days of the treasurer's receipt.

12. The Fossella Committee did not disclose outstanding obligations to seven vendors totaling \$10,708 in Schedules D as required.

13. Although Respondents reported the payment of the aforementioned debts as disbursements in Schedule B of their disclosure reports, they did not properly disclose the liquidation of these debts in its respective Schedule Ds as required by 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(a).

V. 1. Respondents violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

2. Respondents violated 11 C.F.R. § 110.1(b)(3)(i) by accepting a Post-Primary contribution in the absence of net debts outstanding.

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3. Respondents violated 2 U.S.C. § 434(b)(3)(A) by incorrectly reporting contributions through re-designations and re-attributions.

4. Respondents violated 11 C.F.R. § 103.3(a) by failing to timely deposit contributions.

5. Respondents violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(a) by failing to disclose the existence of debts, and the liquidation of those debts.

VI. 1. Respondents will pay a civil penalty in the amount of Forty-Two Thousand dollars (\$42,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will refund the excessive and Post-Primary contributions to contributors totaling \$73,410.

3. Respondents will amend their reports to reflect the proper designations and re-attributions of contributions, disclosure of debts, and refunds of excessive contributions.

4. Respondents shall cease and desist from violating 2 U.S.C. §§ 434(b)(3)(A), 434(b)(8), 441a(f), and 11 C.F.R. §§ 103.3(a), 104.11(a).

5. Respondents shall send a representative who will have ongoing responsibility for the submission of its FEC disclosure reports to attend a Commission sponsored training, as a means of educating Respondents as to their reporting obligations under the Act.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. Respondents shall have no more than 90 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:

  
Rhonda J. Vosdinger  
Associate General Counsel  
for Enforcement

10/25/22  
Date

FOR THE RESPONDENTS:



(Name) Robert Allan Muir, Jr.  
(Position) Attorney for Respondents

October 23, 2022  
Date

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